

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEVON ECHOLS,

Petitioner,

v.

CASE NO. 2:09-CV-10049
HONORABLE GEORGE CARAM STEEH

CAROL HOWES,

Respondent.

_____ /

ORDER DENYING PETITIONER'S LETTER REQUEST

This matter is before the Court on Petitioner's letter request essentially seeking relief from judgment under Federal Rule of Civil Procedure 60(b) concerning the Court's September 1, 2009 opinion and order granting Respondent's motion for summary judgment and dismissing the petition for a writ of habeas corpus on statute of limitations grounds. The United States Court of Appeals for the Sixth Circuit denied a certificate of appealability on May 19, 2010. Petitioner asks that the Court "restore the time to file a habeas petition in this matter" because he filed a (second) motion for relief from judgment on December 23, 2010 and was granted an appeal of right by the state trial court. The Michigan Court of Appeals recently issued a decision denying Petitioner relief and affirming his convictions. *People v. Echols*, No. 303354 (Mich. Ct. App. June 28, 2012) (unpublished). It does not appear that Petitioner has yet sought leave to appeal with the Michigan Supreme Court.

A district court may grant relief from a final judgment or order under Rule 60(b)

only upon a showing of one of the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct of an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, it is based on an earlier judgment that has been reversed or vacated, or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief. Fed. R. Civ. P. 60(b).

Petitioner has made no such showing. The Court properly determined that his habeas petition was untimely at the time of its dismissal decision. If Petitioner was granted a new appeal of right by the state courts subsequent to the Court's decision, his proper recourse is to seek permission from the Sixth Circuit to file a second or successive federal habeas petition, see 28 U.S.C. § 2244(b)(3)(A); *Stewart v. Martinez-Villareal*, 523 U.S. 637, 641 (1998); *Felker v. Turpin*, 518 U.S. 651, 664 (1996), after the full exhaustion of state court remedies. See *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999) ("state prisoners must give the state courts one full fair opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process"); *Rust v. Zent*, 17 F.3d 155, 160 (6th Cir. 1994). Petitioner has not shown that he is entitled to relief from judgment in this case. His letter request is therefore **DENIED**. This case remains closed.

IT IS SO ORDERED.

Dated: August 22, 2012

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on August 22, 2012, by electronic and/or ordinary mail and also on Devon Sharod Echols #369217, Gus Harrison Correctional Facility, 2727 E. Beecher Street, Adrian, MI 49221.

s/Barbara Radke
Deputy Clerk